

File No. 200881

Committee Item No. _____

Board Item No. 2

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: August 7, 2020

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Prepared by: Jocelyn Wong

Date: August 6, 2020

Prepared by: _____

Date: _____

1 [Approving Submission of Sales Tax to Support Caltrain Service - November 3, 2020,
2 Election]

3 **Resolution approving the Peninsula Corridor Joint Powers Board’s placement of a**
4 **three-county measure to impose a one-eighth of one percent (0.125%) retail**
5 **transactions and use tax to be used for operating and capital purposes of the Caltrain**
6 **rail service at an election to be held on November 3, 2020; rescinding and replacing**
7 **Resolution No. 334-20, which conditionally approved submission of the same measure;**
8 **and affirming the San Francisco Municipal Transportation Agency’s determination**
9 **under the California Environmental Quality Act.**

10
11 WHEREAS, The Peninsula Corridor Joint Powers Board (JPB) is a joint exercise of
12 powers authority duly formed pursuant to the October 3, 1996, joint powers agreement
13 between the City and County of San Francisco (CCSF), the San Mateo County Transit District
14 (SMCTD), and the Santa Clara Valley Transportation Authority (VTA) (together, the "Member
15 Agencies"); and

16 WHEREAS, The JPB operates the Caltrain passenger rail service between San
17 Francisco, California and Gilroy, California, currently serving 32 stations along the 77-mile
18 corridor; and

19 WHEREAS, Since its inception, the JPB has had no dedicated source of funding other
20 than passenger fares and, instead, relies on contributions from its Member Agencies to fill
21 minimum financial requirements in its operating and capital budgets under two different
22 funding formulas; and

23 WHEREAS, For capital costs, each of the Member Agencies (a) contributes an equal
24 amount of capital funding each year and (b) supplements operating funding based on the
25 percentage of system ridership originating in each County; and

1 WHEREAS, The levels of both capital and operating funding are determined by the
2 funding capacity of the Member Agency with the least ability to provide its share of funding in
3 any given year, and the amount that Member Agency can make available then becomes the
4 standard against which the contributions of the other Member Agencies are calculated; and

5 WHEREAS, This approach fosters an uncertain financial and planning environment for
6 the JPB, which is exacerbated by continually-escalating operating, maintenance and repair
7 costs, thereby keeping the JPB from operating at service levels that meet the rising passenger
8 demands for Caltrain service; and

9 WHEREAS, Caltrain, the seventh largest commuter rail service in the nation, operates
10 the most efficient such service based on costs per passenger mile, and has the highest
11 farebox recovery rate of all the commuter rail services nationwide at 70%, which reflects the
12 proportion of operating costs funded by passenger fares; and

13 WHEREAS, The JPB is facing significant and ever-increasing structural funding
14 shortfalls, which impact its ability to meet its operational needs, address its state of good
15 repair requirements and undertake necessary capital improvements to sustain the Caltrain
16 service; and

17 WHEREAS, The JPB has embarked upon a project to electrify its right of way between
18 San Francisco and San Jose, which will transform the Caltrain service into a more
19 environmentally sustainable, quiet and nimble operation commencing in 2022; and

20 WHEREAS, Although the electrified Caltrain service will eliminate the costs of diesel
21 fuel, Caltrain will confront new system and technological costs for operation and maintenance
22 of the electrified system, the electrical multiple unit rail cars, and the positive train control
23 system; and

24 WHEREAS, To provide a means to address the JPB's financial challenges, in 2017 the
25 Governor signed Senate Bill No. 797, introduced by Senator Jerry Hill, authorizing the JPB to

1 implement a new retail transactions and use tax of up to 0.125 percent in the three Counties
2 served by Caltrain if (i) the Board of Directors of the JPB adopts a resolution submitting the
3 measure to the voters, (ii) the measure is approved by the Boards of Supervisors in the
4 Counties of Santa Clara, San Mateo and San Francisco, (iii) the measure is approved by a
5 majority vote of the governing boards of the San Francisco Municipal Transportation Agency
6 (SFMTA), the SMCTD, and VTA, and (iv) the tax is adopted by a two-thirds vote of the three
7 Counties' voters; and

8 WHEREAS, The revenues derived from the one-eighth cent sales tax will provide a
9 dedicated funding source to support the operational and capital cost of the service; and

10 WHEREAS, More specifically, the tax revenues from this measure will be prioritized:

- 11 • To support the operation of Caltrain service levels throughout the corridor from San
12 Francisco to Gilroy, including, but not limited to, expanded service and increased
13 capacity realized through the operation of an electrified system; the required
14 support includes the maintenance of equipment, infrastructure and systems
15 necessary to sustain and expand the service;
- 16 • To support the infrastructure, rolling stock, and capital projects necessary to
17 advance the expansion of the Caltrain peak hour service from six trains per hour
18 per direction to eight trains per hour per direction, as well as the expansion of the
19 Gilroy service to a minimum of five morning and five afternoon trains;
- 20 • To develop and implement programs to expand access to the Caltrain service and
21 facilitate use of the system by passengers of all income levels, including
22 establishing an affordability program with consideration of discounted passes and/or
23 additional means-based fare discounts informed by Caltrain's Means Based Fare
24 Pilot Program; and

25

1 WHEREAS, Revenues will also be available to help leverage other local, regional, state
2 and federal investments to advance capital projects necessary to implement the Caltrain
3 Business Plan’s 2040 Service Vision, adopted by the Peninsula Corridor Joint Powers Board
4 on October 3, 2019; these projects include, but are not limited to: the San Francisco
5 Downtown Extension project including the Pennsylvania Avenue alignment, the extension of
6 electrified train service to Gilroy, and grade separations throughout the corridor; and

7 WHEREAS, On March 10, 2020, the SFMTA, under authority delegated by the
8 Planning Department, determined that the approval of the JPB’s placement of a tax on the
9 ballot is not a “project” under the California Environmental Quality Act (CEQA) pursuant Title
10 14 of the California Code of Regulations, Sections 15060(c) and 15378(b); and

11 WHEREAS, A copy of the CEQA determination is on file with the Clerk of the Board of
12 Supervisors in File No. 200881, and is incorporated herein by reference; and

13 WHEREAS, This tax measure is a district measure governed by the California
14 Elections Code, Division 9, Chapter 4, Section 9300, et seq.; and

15 WHEREAS, Under California Elections Code, Section 9313, the Santa Clara County
16 Counsel’s Office shall prepare the impartial analysis of this tax measure for inclusion in San
17 Francisco’s Voter Information Pamphlet, shall make the impartial analysis available for public
18 review for ten days, and shall submit the impartial analysis and available translations of that
19 impartial analysis to the San Francisco Department of Elections; and

20 WHEREAS, The San Mateo County Registrar of Voters shall serve as the district
21 elections official for this tax measure, shall make the tax measure’s legal text and arguments
22 available for public examination for ten days, and shall submit the final materials to the San
23 Francisco Department of Elections; and

24 WHEREAS, As required by California Revenue and Taxation Code section 7286.65
25 (b), this Resolution evidences the San Francisco Board of Supervisors’ approval for the JPB

1 to place a sales tax measure before the voters of the three Counties to provide the JPB with a
2 steady stream of funding to support the annual operating, maintenance and capital needs of
3 an electrified Caltrain service with increased frequency and capacity, which in turn will reduce
4 traffic congestion and air pollution in the three Counties; and

5 WHEREAS, At its meeting on July 28, 2020, the Board of Supervisors approved
6 Resolution No. 334-20 conditionally approving submission of the tax measure subject to
7 specified conditions, and the Mayor approved that resolution on July 30, 2020; now, therefore,
8 be it

9 RESOLVED, That the San Francisco Board of Supervisors approves placement by the
10 Peninsula Corridor Joint Powers Board of a measure on the November 3, 2020 ballot in Santa
11 Clara, San Mateo and San Francisco Counties to authorize the JPB to impose a one-eighth of
12 one percent (0.125%) retail transactions and use tax for a period of thirty (30) years,
13 throughout the three Counties, to fund operating and capital expenses of the Caltrain rail
14 service, and support the operating and capital needs required to implement the Service Vision
15 adopted by the Peninsula Corridor Joint Powers Board on October 3, 2019 as part of the
16 Caltrain Business Plan; and, be it

17 FURTHER RESOLVED, That this Resolution rescinds and replaces Resolution No.
18 334-20, which conditionally approved submission of the tax measure.

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Not a "project" under CEQA pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

Melinda Hne

Date

San Francisco Municipal Transportation Agency

To the Joint Powers Authority Board of Directors:

A dedicated source of revenue is a necessity for the continued operation and growth of Caltrain. With its pre-COVID-19 ridership of over 18 million annually, Caltrain is an essential element of the Bay Area's transportation network. As we plan the region's recovery from COVID-19, a dedicated source of revenue for Caltrain is more important than ever.

We request your consideration of the attached resolution by the Joint Powers Board of Directors at the upcoming special meeting of August 6, 2020. At the regular meeting on the same date, we will also ask that a Caltrain sales tax be placed on the November 3, 2020 ballot. Taken together, these resolutions will address Caltrain's critical funding need while also focusing our efforts on addressing the long standing issues regarding the governance relationships and management of Caltrain.



Dave Pine, Chair



Cindy Chavez, Director



Steve Heminger, Director



Shamann Walton, Director

- 1 a) That in each fiscal year beginning on July 1, 2021 the JPB may approve the
2 expenditure of up to \$40 million of revenue from the Caltrain tax measure for
3 operations or capital repair of Caltrain, with the approval of at least five (5)
4 members of the JPB;
- 5 b) That the JPB may expend an amount in excess of \$40 million of revenue from
6 the Caltrain tax measure in any fiscal year with the approval of at least six (6)
7 members of the JPB;
- 8 c) That the JPB shall be subject to the conditions described in (a) and (b), until such
9 time as the Joint Powers Agreement (JPA) has been amended to modify its
10 governance structure or procedures so that they are satisfactory to the three
11 Member Agencies. After that time, the JPB Board may allocate any and all
12 sales tax revenues for operating or capital expenditures with the approval of at
13 least (5) members of the JPB;
- 14 d) That it is the desire of the JPB that the modification of “governance structure or
15 procedures,” described above, will include amendments that enable the majority
16 of the JPB or successor governing board (or, if a larger regional rail authority is
17 created that includes Caltrain, a majority of that agency’s board), to appoint an
18 Executive Director to operate Caltrain provided that the parties have reached an
19 agreement to reimburse SMCTD for its investment in Caltrain.
- 20 e) That the JPB will recommend a governance structure or procedures to the three
21 Member Agencies no later than December 31, 2021.
- 22 f) That the JPB will initiate efforts to reimburse the SMCTD for its investment in
23 Caltrain, including by engaging with Metropolitan Transportation Commission and
24 other funding partners and by prioritizing the payment of the SMCTD investment
25 by the JPB if the Caltrain tax measure is approved;
- 26 g) That the JPB Board shall appoint an independent counsel (and shall not have the
27 same counsel as SMCTD) by November 30, 2020 to represent the JPB;

1 h) That the JPB Board shall appoint an auditor (and shall not have the same auditor
2 as SMCTD) by November 30, 2020.

3 i) On any agenda for a regularly scheduled meeting of the full JPB, with at least 7
4 calendar days prior notice in advance of the meeting, any item may be placed on
5 that board agenda for consideration by the JPB Board by the request of 2 or
6 more of the JPB members to the JPB Chair and General Manager.

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RESOLUTION NO. 2020-

**BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA**

* * *

**IMPOSING A ONE-EIGHTH OF ONE PERCENT
RETAIL TRANSACTIONS AND USE TAX TO BE USED FOR
OPERATING AND CAPITAL PURPOSES OF THE CALTRAIN RAIL SERVICE**

WHEREAS, the Peninsula Corridor Joint Powers Board (hereinafter referred to as the "JPB") is a joint exercise of powers authority duly formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code of the State of California (the "Joint Exercise of Powers Act") and the joint powers agreement by and between the City and County of San Francisco ("CCSF"), the San Mateo County Transit District ("SMCTD"), and the Santa Clara Valley Transportation Authority ("VTA"), restated and dated October 3, 1996; and

WHEREAS, the JPB operates passenger rail service between San Francisco, California and Gilroy, California currently serving 32 stations along the 77-mile corridor, operating approximately 90 weekday trains, which include express, limited, and local trains ("Caltrain rail service"); and

WHEREAS, effective January 1, 2018, Part 1.7 (commencing with Section 7286.65) of Division 2 of the Revenue and Taxation Code of the State of California was amended by California Senate Bill No. 797 to authorize the JPB to submit to the voters of the City and County of San Francisco, and the Counties of San Mateo and Santa Clara (together, the "Counties"), a regional measure proposing to impose a retail transactions and use tax of not more than 0.125 percent to be used for the operating and capital purposes of the Caltrain rail service; and

WHEREAS, the measure may only be submitted to the voters upon (a) a two-thirds vote of the JPB Board of Directors, (b) approval of the Boards of Supervisors of the

Counties, and (c) approval of the governing boards of the San Francisco Municipal Transportation Agency, SMCTD, and VTA; and

WHEREAS, the JPB has proposed approval of this Resolution that has as its special purpose to authorize the JPB to impose a one-eighth of one percent (0.125%) retail transactions and use tax for a period of thirty (30) years, throughout the three Counties, to fund operating and capital expenses of the Caltrain rail service, and to support the operating and capital needs required to implement the Service Vision adopted by the JPB on October 3, 2019 as part of the Caltrain Business Plan.

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1. Title; Summary

- a. This Resolution shall be known as the "2020 Peninsula Corridor Joint Powers Board Retail Transactions and Use Tax Resolution" and may also be referred to herein as the "Resolution."
- b. This Resolution imposes a retail transactions and use tax at the rate of one-eighth of one percent (0.125%) within the City and County of San Francisco, and the Counties of San Mateo and Santa Clara (together, the "Counties") to be operative on the first day of the first calendar quarter commencing not less than 110 days after the adoption of this Resolution by the voters, the authority to levy such tax to remain in effect for thirty (30) years, for the operating and capital purposes of the Caltrain rail service.
- c. The JPB or a successor agency, if any, will administer proceeds of the retail transactions and use tax imposed by this Resolution ("2020 Sales Tax").
- d. The JPB shall develop guidelines to administer the tax proceeds received from the enactment of the retail transactions and use tax, and shall allocate the tax proceeds to the operating and capital expenses of the Caltrain rail service. Administration of the 2020 Sales Tax proceeds will be subject to review by an

independent citizens' oversight committee to verify compliance with the purpose of the tax.

- e. The provisions in this Resolution shall apply solely to the retail transactions and use tax adopted pursuant to this Resolution. Nothing in this Resolution is intended to modify, repeal or alter any resolutions previously adopted by the JPB.

Section 2. Definitions.

- a. "Board" means the Board of Directors of the Peninsula Corridor Joint Powers Board or its successor agency.
- b. "Boards of Supervisors" means the Boards of Supervisors in each of the Counties.
- c. "Caltrain" means the passenger rail service on the rail line operated by the Peninsula Corridor Joint Powers Board (or its successor agency) between Gilroy and San Francisco.
- d. "CCSF" means the City and County of San Francisco
- e. "Counties" means the City and County of San Francisco and the Counties of San Mateo and Santa Clara. The singular term "County" may also be used to mean any of the Counties.
- f. "Department of Tax and Fee Administration" means the California Department of Tax and Fee Administration or any successor thereto.
- g. "Government Code" means the Government Code of the State of California, as amended and supplemented from time to time pursuant to its terms.
- h. "Member Agencies of the JPB" means CCSF, SMCTD and VTA.
- i. "Operative Date" means the date determined as described in Section 5 herein, July 1, 2021.

- j. "JPB" means the Peninsula Corridor Joint Powers Board (or its successor agency).
- k. "Public Utilities Code" means the Public Utilities Code of the State of California, as amended and supplemented from time to time pursuant to its terms.
- l. "Revenue and Taxation Code" means the Revenue and Taxation Code of the State of California, as amended and supplemented from time to time pursuant to its terms.
- m. "Sales and Use Tax Law" means Part 1 of Division 2 of the Revenue and Taxation Code of the State of California, commencing with Section 6001 thereof, as amended and supplemented from time to time pursuant to its terms.
- n. "SMCTD" means the San Mateo County Transit District.
- o. "Tax Proceeds" means amounts received by the JPB from the Department of Tax and Fee Administration from the imposition of the 2020 Sales Tax imposed pursuant to this Resolution.
- p. "Tax" or "2020 Sales Tax" means the one-eighth of one percent (0.125%) retail transactions and use tax imposed by this Resolution upon approval of two-thirds (2/3) of the electors voting on the ballot measure set forth in Section 16 hereof, to be used for the operating and capital purposes of the Caltrain rail service.
- q. "Transactions and Use Tax Law" means Part 1.6 of Division 2 of the Revenue and Taxation Code of the State of California, commencing with Section 7251 thereof, as amended and supplemented from time to time pursuant to its terms.
- r. "Vehicle Code" means the Vehicle Code of the State of California, as amended and supplemented from time to time pursuant to its terms.
- s. "VTA" means the Santa Clara Valley Transportation Authority.

Section 3. Findings.

The Board hereby finds and determines that the recitals set forth above and incorporated herein by reference are true and correct. In addition, the Board hereby finds:

- a. The JPB is facing significant and ever increasing structural funding shortfalls which impact its ability to meet its operational needs, address its state of good repair requirements and undertake necessary capital improvements to sustain the Caltrain service.
- b. Since its inception pursuant to the Joint Powers Agreement by and between CCSF, SMCTD, and VTA, dated October 3, 1996, the JPB has had no dedicated source of funding other than passenger fares. Instead, the JPB relies on contributions from its Member Agencies to fulfill minimum financial requirements in its operating and capital budgets under two different funding formulas. For capital costs, each of the Member Agencies contributes an equal amount of capital funding each year. The Member Agencies also supplement operating funding based on the percentage of system ridership originating in each County. The levels of both capital and operating funding are determined by the funding capacity of the Member Agency with the least ability to provide its share of funding in any given year, and the amount that Member Agency can make available then becomes the standard against which the contributions of the other Member Agencies are calculated. This approach fosters an uncertain financial and planning environment for the JPB.
- c. In an environment of continual escalation in operating, maintenance and repair costs, the JPB does not have the capacity to operate service levels that meet the rising passenger demands for Caltrain service.
- d. The JPB's farebox recovery rate of over 70%, which reflects the proportion of operating costs funded by passenger fares, exceeds all other rail commute services nationwide.

- e. The Caltrain service is the seventh largest commuter rail service in the nation and it operates the most efficient such service based on costs per passenger mile.
- f. To provide a means to address the JPB's financial challenges, in 2017 the Governor signed Senate Bill No. 797, introduced by Senator Jerry Hill, authorizing the JPB to implement a new retail transactions and use tax of up to 0.125 percent if (i) the Board of Directors of the JPB adopts, by a two-thirds vote, a resolution submitting the measure to the voters, (ii) the measure is approved by the Boards of Supervisors of each of the Counties, (iii) the measure is approved by the governing boards of the San Francisco Municipal Transportation Agency, the SMCTD, and VTA, and (iv) the tax is adopted by a two-thirds vote of the Counties' voters.
- g. The JPB has embarked upon a project to electrify its right of way between San Francisco and San Jose which will transform the Caltrain service into a more environmentally sustainable, quiet and nimble operation commencing in 2022.
- h. Although the electrified Caltrain service will eliminate the costs of diesel fuel, Caltrain will confront new system and technological costs for operation and maintenance of the electrified system, the electrical multiple unit rail cars, and the positive train control system.
- i. The revenues derived from the 0.125 percent sales tax in the Counties is forecast to be sufficient to cover the operational needs of the Caltrain rail service, which, in turn, will reduce the pressure on the JPB to continually raise passenger fares and will reduce the need for the Member Agencies to contribute funding for operations.
- j. Approval of this Resolution will place before the voters of the three Counties the opportunity to provide the JPB with a steady stream of funding to support the annual operating and maintenance needs of an electrified Caltrain service with increased frequency and capacity, which in turn will reduce traffic congestion and air pollution in the three Counties.

Section 4. Imposition of Retail Transactions and Use Tax; Special Purpose; Use of Proceeds.

Subject to the limits imposed by this Resolution and the provisions of Section 7286.65 of the Revenue and Taxation Code, which took effect January 1, 2018, the JPB hereby imposes, in the incorporated and unincorporated territory of the City and County of San Francisco County, County of San Mateo, and County of Santa Clara, an additional retail transactions and use tax at the rate of one-eighth of one percent (0.125%), such tax (i) to be imposed beginning on the first day of the first calendar quarter commencing not less than 110 days after the approval of the retail transactions and use tax by the electors voting on the ballot measure set forth in Section 17 hereof, (ii) to remain in effect for a period of thirty (30) years, and (iii) to be for the operating and capital purposes of the Caltrain rail service.

More specifically, this Resolution, if adopted, should be interpreted so as to:

- a. impose a new one-eighth of one percent (0.125%) retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and consistent with Article XIII C of the California Constitution;
- b. set a maximum term of thirty (30) years during which time the retail transactions and use tax shall be imposed;
- c. incorporate provisions identical to those of the Sales and Use Tax Law insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code;
- d. establish that the retail transactions and use tax be administered and collected by the Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the Department of

Tax and Fee Administration in administering and collecting state transactions and use taxes as such terms are defined in the Sales and Use Tax Law;

- e. authorize the administration of the retail transactions and use tax in a manner that will, to the degree possible, be consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the retail transactions and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this Resolution;
- f. require that proceeds of the Tax imposed by this Resolution be for the operating and capital purposes of the Caltrain rail service and that the tax revenues from this measure will be prioritized:
 - 1. To support the operation of Caltrain service levels throughout the corridor from San Francisco to Gilroy, including, but not limited to, expanded service and increased capacity realized through the operation of an electrified system. The required support includes the maintenance of equipment, infrastructure and systems necessary to sustain and expand the service;
 - 2. To support the infrastructure, rolling stock, and capital projects necessary to advance the expansion of the Caltrain peak hour service from six trains per hour per direction to eight trains per hour per direction, as well as the expansion of the Gilroy service to a minimum of five morning and five afternoon trains;
 - 3. To develop and implement programs to expand access to the Caltrain service and facilitate use of the system by passengers of all income levels, including establishing an affordability program with consideration of discounted passes and/or additional means-based fare discounts informed by Caltrain's participation in the regional Means Based Fare Pilot Program;
 - 4. To help leverage other local, regional, state and federal investments to advance capital projects necessary to implement the Caltrain Business Plan's 2040 Service Vision, adopted by the JPB on October 3, 2019,

including, but not limited to: the San Francisco Downtown Extension project including the Pennsylvania Avenue alignment, the extension of electrified train service to Gilroy, and grade separations throughout the Caltrain rail corridor; and

5. To provide the JPB with a steady stream of funding to support the annual operating, maintenance and capital needs of an electrified Caltrain service with increased frequency and capacity, which in turn will reduce traffic congestion and air pollution in the Counties; and
- g. authorize the issuance, from time to time, of limited tax bonds to finance transportation improvements consistent with the purpose of the Tax and applicable law.

Section 5. Applicability; Effective Date; Operative Date and Period of Tax Imposition, Termination Date.

- a. This Resolution shall be applicable in the incorporated and unincorporated territory of the Counties.
- b. The Resolution will become effective at the close of the polls on the day of election at which the ballot measure set forth in Section 16 of this Resolution is adopted by a two-thirds (2/3) vote of the electors voting on such ballot measure at such election.
- c. Pursuant to Section 7265 of the Revenue and Taxation Code, this Resolution shall be operative on the first day of the first calendar quarter commencing not less than 110 days after the adoption of the Resolution, July 1, 2021.
- d. The maximum period during which the 2020 Sales Tax will be imposed is thirty (30) years, terminating June 30, 2051.

Section 6. Administration of the 2020 Sales Tax Proceeds

- a. Responsibility for Administration and Implementation. The JPB or a successor agency, if any, will administer the 2020 Sales Tax Proceeds.

- b. Restrictions on the Use of Tax Proceeds. Tax Proceeds must be spent for the operating and capital purposes of the Caltrain rail service.
- c. Environmental Review. Environmental reporting, review, and approval procedures as provided under the National Environmental Policy Act, the California Environmental Quality Act, or other applicable laws will be adhered to as a prerequisite to implementation of any project funded with Tax Proceeds.
- d. Independent Citizens Oversight; Audits. Administration of the Tax Proceeds will be subject to review by the nine-member JPB Citizens Advisory Committee, or a similar successor independent citizens oversight body, to verify that Tax Proceeds are invested in a way that is consistent with the purpose of the Tax.

Annually, the JPB shall have an audit conducted by an independent auditor. The auditor shall review the receipt of Tax Proceeds and expenditure of Tax Proceeds. The JPB independent Citizens Advisory Committee shall receive the audit findings report, hold a public hearing and issue a report annually to provide the public with information regarding how Tax Proceeds are being spent. The hearing will be held at a public meeting subject to the Ralph M. Brown Act.

Section 7. Contract with the State.

Prior to the Operative Date, as provided in the Revenue and Tax Code, the JPB will contract with the Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this Resolution and the 2020 Sales Tax; provided that, if the JPB shall not have contracted with the Department of Tax and Fee Administration prior to the Operative Date of this Resolution, the JPB shall nevertheless so contract and in such case, the Operative Date of this Resolution shall be the first day of the first calendar quarter following the execution of such a contract and references herein to June 30, 2051 shall be extended to permit collection of the 2020 Sales Tax for up to thirty (30) years.

Section 8. Transactions and Use Tax Rate of One-Eighth of One Percent; Excise Tax Rate of One-Eighth of One Percent

- a. Transactions Tax Rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of San Francisco County, San Mateo County, and Santa Clara County at the rate of one-eighth of one percent (0.125%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the Counties on and after July 1, 2021. This tax shall be imposed for a maximum period of thirty (30) years.

- b. Use Tax Rate. An excise tax is hereby imposed on the storage, use, or other consumption in San Francisco County, San Mateo County, and Santa Clara County of tangible personal property purchased from any retailer on and after July 1, 2021 for storage, use, or other consumption in the Counties at the rate of one-eighth of one percent (0.125%) of the sales price of the property. This tax shall be imposed for a maximum period of thirty (30) years.

Section 9. Place of Sale.

For the purposes of this Resolution, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the Department of Tax and Fee Administration.

Section 10. Adoption of Provisions of State Revenue and Taxation Code.

Except as otherwise provided in this Resolution and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the

Revenue and Taxation Code are hereby adopted and made part of this Resolution as though fully set forth herein.

Section 11. Limitations on Adoption of State Law and Collection of Use Taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing agency, the name of the JPB shall be substituted therefor. The substitution, however, shall not be made: (i) when the word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California; (ii) when the result of that substitution would require action to be taken by or against the JPB or any agent, officer, or employee thereof rather than by or against the Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Resolution; (iii) in those sections, including but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to (a) provide an exemption from the 2020 Sales Tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from the 2020 Sales Tax while such sales, storage, use, or other consumption remains subject to tax by the State of California under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or (b) impose the 2020 Sales Tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State of California under said provisions of the Revenue and Taxation Code; and (iv) in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code. The names of "San Francisco County, San Mateo County, and Santa Clara County" shall be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 and in the definition of that phrase in Section 6203.

Section 12. Permit Not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Resolution.

Section 13. Exemptions, Exclusions, and Credits.

- a. There shall be excluded from the measure of the 2020 Sales Tax the amount of any transactions and use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions and use tax.
- b. There are exempted from the computation of the amount of transactions tax portion of the 2020 Sales Tax gross receipts derived from:
 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of the State of California, the United States, or any foreign government.
 2. Sales of property to be used outside the Counties which is shipped to a point outside the Counties, pursuant to the contract of sale, by delivery to such point by a retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this subsection, delivery to a point outside the Counties shall be satisfied;
 - i. with respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-Counties address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

- ii. with respect to commercial vehicles, by registration to a place of business out-of-Counties, and a declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 3. Sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this Resolution; and
 4. A lease of tangible personal property which is a continuing sale of such property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the Operative Date of this Resolution.
 5. For the purposes of numbered sections 3 and 4 of this Section 13(b), the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract upon notice, whether or not such right is exercised.
- c. There are exempted from the use tax imposed by this Resolution, the storage, use or other consumption in the Counties of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance;
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of the State of California, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Section 6366 and 6366.1 of the Revenue and Taxation Code of the State of California;

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this Resolution; and
4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the Operative Date of this Resolution.
5. For the purposes of numbered sections 3 and 4 of this Section 13(c), above, storage, use, or other consumption, or possession, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time during which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
6. Except as provided in numbered section 7 of this Section 13(c), below, a retailer engaged in business in the County or Counties shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the County or Counties or participates within the County or Counties in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the County or Counties or through any representative, agency, canvasser, solicitor, subsidiary or person in the County or Counties under the authority of the retailer.
7. "A retailer engaged in business in the Counties" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in any of the Counties.

8. "A retailer engaged in business in the Counties" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the state by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and regulations thereunder.
- d. Any person subject to use tax under this Resolution may credit against that tax any transactions or reimbursement for transaction tax paid to a district imposing, or retailer liable for a transaction tax pursuant to Chapter 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property, the storage, use or other consumption of which is subject to the use tax.

Section 14. Revenue and Taxation Code Amendments.

All amendments to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, enacted subsequent to the effective date of this Resolution as described in Section 5 hereof, shall automatically become part of this Resolution; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this Resolution.

Section 15. Issuance of Bonds.

From time to time, pursuant to the Joint Exercise of Powers Act, the JPB is authorized to issue limited tax bonds payable from, and secured by a pledge of, Tax Proceeds for the operating and capital purposes of the Caltrain rail service.

Maximum bonded indebtedness which may be outstanding at any one time may not exceed the estimated proceeds of the 2020 Sales Tax as determined by the JPB.

Nothing herein shall limit or restrict in any way the power and authority of the JPB to issue bonds, notes or other obligations, to enter into loan agreements, leases, reimbursement agreements, standby bond purchase agreements, interest rate swap agreements or other derivative contracts or to engage in any other transaction under the Public Utilities Code, the Government Code or any other applicable law.

Section 16. Ballot Measure.

There shall be proposed to the voters of San Francisco County, San Mateo County, and Santa Clara County the following proposition:

"To preserve Caltrain service and support regional economic recovery, prevent traffic congestion, make Caltrain more affordable and accessible, reduce air pollution with cleaner and quieter electric trains, make travel times faster, and increase Caltrain frequency and capacity between Santa Clara, San Mateo and San Francisco counties, shall the Peninsula Corridor Joint Powers Board's resolution levying a 30-year one-eighth cent sales tax with oversight and audits, providing approximately \$100 million annually for Caltrain that the State cannot take away, be adopted?"

Section 17. Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding against the State of California or the JPB, or against any officer of the State of California or the JPB, to prevent or enjoin the collection of any tax or any amount of tax required to be collected under this Resolution or under Part 1.6 of Division 2 of the Revenue and Taxation Code.

Section 18. Severability.

If any provision of this Resolution or the application of this Resolution to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, all other provisions or actions taken to implement the Resolution, which are otherwise lawful, shall remain in full force and effect.

Regularly passed and adopted this 6th day of August, 2020 by the following
vote:

AYES:

NOES:

ABSENT:

Chair, Peninsula Corridor Joint Powers Board

ATTEST:

JPB Secretary

**RESOLUTION NO. 2020-
BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA**

**CALLING AND PROVIDING FOR A JOINT POWERS AUTHORITY REGIONAL ELECTION
ON NOVEMBER 3, 2020 FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF THE CITY
AND COUNTY OF SAN FRANCISCO, SAN MATEO COUNTY AND SANTA CLARA COUNTY A
MEASURE AUTHORIZING ADOPTION OF A RETAIL TRANSACTIONS AND USE TAX
RESOLUTION TO FUND THE CALTRAIN COMMUTER RAILROAD; AND REQUESTING
CONSOLIDATION OF THIS JOINT POWERS AUTHORITY REGIONAL ELECTION WITH THE
NOVEMBER 3, 2020 STATEWIDE GENERAL ELECTION**

WHEREAS, the Peninsula Corridor Joint Powers Board (JPB) is a joint exercise of powers authority duly formed and governed pursuant to the October 3, 1996 restated joint powers agreement between the City and County of San Francisco, the San Mateo County Transit District (SMCTD), and the Santa Clara Valley Transportation Authority (VTA) (together, the "Member Agencies"); and

WHEREAS, to provide a means to address the JPB's financial challenges, in 2017 the Governor signed Senate Bill No. 797, introduced by Senator Jerry Hill and codified as Section 7286.65 of the California Revenue and Taxation Code, authorizing the JPB to implement a new retail transactions and use tax of up to 0.125 percent in the City and County of San Francisco and the Counties of San Mateo and Santa Clara (together, the "Counties") if (i) the Board of Directors of the JPB adopts a resolution by a two-thirds vote submitting the measure to the voters, (ii) the submission of the measure to the voters is approved by each of the Boards of Supervisors in the Counties, (iii) the submission of the measure to the voters is approved by the governing boards of the San Francisco Municipal Transportation Agency (SFMTA), the SMCTD, and VTA, and (iv) the tax is adopted by a two-thirds vote of the three Counties' voters; and

WHEREAS, on this August 6, 2020, the JPB's Board of Directors (Board) adopted a resolution (Resolution), including a ballot measure, providing for the imposition of a one-eighth of one percent (0.125%) retail transactions and use tax for a period of thirty (30) years, throughout the three Counties, to fund operating and capital expenses of the Caltrain rail service, and to support the operating and capital needs required to

implement the Service Vision adopted by the JPB on October 3, 2019 as part of the Caltrain Business Plan; and

WHEREAS, more specifically, the tax revenues from this measure will be prioritized:

- To support the operation of Caltrain service levels throughout the corridor from San Francisco to Gilroy, including, but not limited to, expanded service and increased capacity realized through the operation of an electrified system. The required support includes the maintenance of equipment, infrastructure and systems necessary to sustain and expand the service;
- To support the infrastructure, rolling stock, and capital projects necessary to advance the expansion of the Caltrain peak hour service from six trains per hour per direction to eight trains per hour per direction, as well as the expansion of the Gilroy service to a minimum of five morning and five afternoon trains;
- To develop and implement programs to expand access to the Caltrain service and facilitate use of the system by passengers of all income levels, including establishing an affordability program with consideration of discounted passes and/or additional means-based fare discounts informed by Caltrain's involvement in the regional Means Based Fare Pilot Program;
- To help leverage other local, regional, state and federal investments to advance capital projects necessary to implement the Caltrain Business Plan's 2040 Service Vision, adopted by the JPB on October 3, 2019, including, but not limited to: the San Francisco Downtown Extension project including the Pennsylvania Avenue alignment, the extension of electrified train service to Gilroy, and grade separations throughout the Caltrain rail corridor; and
- To provide the JPB with a steady stream of funding to support the annual operating, maintenance and capital needs of an electrified Caltrain service with increased frequency and capacity, which in turn will reduce traffic congestion and air pollution in the Counties; and

WHEREAS, pursuant to subdivision (d) of Section 2 of Article XIII C of the California Constitution, such retail transactions and use tax may take effect only if two-thirds of the qualified voters of the incorporated and unincorporated territory of the three Counties,

which comprise the territory of the JPB, voting on the ballot measure, set forth in Section 3 below, vote in favor of the ballot measure; and

WHEREAS, as required by California Revenue and Taxation Code Section 7286.65(b), the following governing boards have granted their approval for the JPB to place the sales tax measure before the voters of the Counties:

- SMCTD Board of Directors on April 1, 2020,
- San Mateo County Board of Supervisors on May 5, 2020,
- Santa Clara County Board of Supervisors on August 4, 2020,
- SFMTA Board of Directors on [REDACTED], 2020,
- San Francisco Board of Supervisors on [REDACTED], 2020; and

WHEREAS, the VTA Board of Directors is expected to consider authorizing placement of the tax measure before the voters of the Counties at its meeting **today, August 6, 2020**; and

WHEREAS, the tax measure is a district measure governed by the California Elections Code, Division 9, Chapter 4, Section 9300, et seq.; and

WHEREAS, the three Counties will be conducting a statewide general election on November 3, 2020; and

WHEREAS, it is in the best interest of the JPB to consolidate the special election to submit the retail transactions and use tax to the voters for approval with the statewide general election to be conducted on November 3, 2020.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Peninsula Corridor Joint Powers Board as follows:

1. The Board of Directors hereby finds and determines that the recitals set forth above and incorporated herein by reference are true and correct.

2. Contingent upon the Board of Directors of the **Santa Clara Valley Transportation Authority** approving placement of the tax measure before the voters, a special election is hereby ordered and called to be held on November 3, 2020 within

the incorporated and unincorporated territory of the City and County of San Francisco, the County of San Mateo and the County of Santa Clara, for the purpose of submitting to the voters of the JPB, for their approval, a Resolution that has as its special purpose to authorize the JPB to impose a one-eighth of one percent (0.125%) retail transactions and use tax for a period of thirty (30) years to fund operating and capital expenses of the Caltrain rail service, and to support the operating and capital needs required to implement the Service Vision adopted by the Peninsula Corridor Joint Powers Board on October 3, 2019 as part of the Caltrain Business Plan.

3. The form of ballot measure as it is to appear on the ballot is as follows:

To preserve Caltrain service and support regional economic recovery, prevent traffic congestion, make Caltrain more affordable and accessible, reduce air pollution with cleaner and quieter electric trains, make travel times faster, and increase Caltrain frequency and capacity between Santa Clara, San Mateo and San Francisco	Yes	
counties, shall the Peninsula Corridor Joint Powers Board's resolution levying a 30-year one-eighth cent sales tax with oversight and audits, providing approximately \$100 million annually for Caltrain that the State cannot take away, be adopted?	No	

4. Pursuant to Part 3 (commencing with Section 10400) of the Elections Code of the State of California (Elections Code), the City and County of San Francisco, the County of San Mateo and the County of Santa Clara are hereby requested to consolidate the JPB's special election with the general elections to be held on November 3, 2020, which elections the Board of Directors hereby acknowledges will be held and conducted in the manner set forth in Section 10418 of the Elections Code.

5. The full text of the Resolution is herein incorporated by reference and the complete text of the Resolution shall be printed in the voter information that accompanies the official vote-by-mail ballot and in the appropriate sample ballot.

6. The JPB Secretary hereby is directed to forward a certified copy of this Resolution, together with any other agreements or documents that may be required to give effect to and carry out the purposes of this Resolution, to (i) the County of Santa Clara's Office of the County Clerk-Recorder, Office of the Clerk of the Board of Supervisors, Registrar of Voters, and Office of the Assessor, (ii) the County of San Mateo's Office of the Assessor-County Clerk-Recorder & Chief Elections Officer and (iii) the City and County of San Francisco's Office of the County Clerk, Director of Elections, Office of the Assessor-Recorder, and Clerk of the Board, (a) upon receiving notice that the VTA Board of Directors has taken action at its meeting today, August 6, 2020, to authorize placement of the tax measure before the voters of the Counties, and (b) not later than the 88th day prior to the election to be held on November 3, 2020.

7. Under California Elections Code Section 9313, and as the highest number of registered voters in the Counties is registered in the County of Santa Clara, the Santa Clara County Counsel's Office is hereby requested to prepare the impartial analysis of this tax measure for inclusion in the voter information pamphlet in the counties, to make the impartial analysis available for public review for ten days, and to submit the impartial analysis and available translations of that impartial analysis to the Department of Elections for each of the counties.

8. As the JPB's administrative headquarters are located in the County of San Mateo, the San Mateo County Chief Elections Officer is hereby requested to serve as the district elections official for this tax measure, to make the tax measure's legal text and arguments available for public examination for ten days, and to submit the final materials to the Department of Elections for each of the three Counties.

9. The Executive Director of the JPB is hereby authorized to file a written argument and a rebuttal argument in favor of the ballot measure.

10. Costs of the services to be provided by the Counties to the JPB in connection with the consolidation of the special election pursuant to the applicable provisions of the Elections Code shall be reimbursed by the JPB.

11. This Resolution shall take effect immediately upon its adoption.

Regularly passed and adopted this 6th day of August, 2020 by the following
vote:

AYES:

NOES:

ABSENT:

Chair, Peninsula Corridor Joint Powers Board

ATTEST:

JPB Secretary

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Walton, Peskin, Haney

Subject:

November 3, 2020 Election - Resolution Approving Submission of Sales Tax to Support Caltrain Service

The text is listed:

Resolution approving submission of one-eighth of one percent (0.125%) retail transactions and use tax for Caltrain or its successor agency to use as certain conditions are met to support its immediate and long-term operational and capital costs, at an election to be held on November 3, 2020; affirming the San Francisco Municipal Transportation Agency's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor: /s/ Shamann Walton

For Clerk's Use Only